

Arnold Richer, #2751
Patrick F. Holden, #6247
RICHER & OVERHOLT, P.C.
Attorneys for Defendant World Botanical Gardens, Inc.
901 West Baxter Drive
South Jordan, Utah 84095
Telephone: (801) 561-4750, Ext. 15
Email: aricher@richerandoverholt.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

WALTER L. WAGNER, an individual,	:	
Plaintiff,	:	Case No. 2:11-cv-784-CW-PMW
v.	:	DEFENDANT WORLD
	:	BOTANICAL GARDENS, INC.'S
PRESTON MICHIE, an individual, KENNETH	:	SECOND MOTION TO DISMISS.
FRANCIK, an individual, LESLIE COBOS, an	:	
individual, MARK ROBINSON, an individual,	:	
ANNETE EMERSON, an individual, STEVE	:	
BRYANT, an individual, and WORLD	:	
BOTANICAL GARDENS, INC., a Nevada	:	District Judge Clark Waddoups
corporation,	:	
Defendants.	:	Magistrate Judge Paul M. Warner

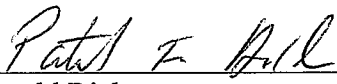
Defendant World Botanical Gardens, Inc, a Nevada corporation ("Defendant WBGI"), by and through its attorneys of record and pursuant to the *Federal Rules of Civil Procedure* (hereinafter "Rule" or "Rules") 12(b)(6) and DUCivR 7-1, submits Defendant World Botanical Gardens, Inc.'s Second Motion to Dismiss.

Magistrate Paul M. Warner issued a *Report and Recommendation* on March 5, 2012 addressing Defendant WBGJ's arguments that Plaintiff's claims are barred under the doctrine of issue preclusion. The Court considered the preclusive effects of three state court decisions and found each element of issue preclusion satisfied, except the finality of the aforementioned three state court decisions.

Defendant WBGJ moves to dismiss Plaintiff's Complaint based on proof of the finality of two of the three state court decisions referenced in the *Report and Recommendation*. Defendant WBGJ's Second Motion to Dismiss is accompanied by Defendant WBGJ's Memorandum in Support of Defendant WBGJ's Second Motion to Dismiss submitted concurrently herewith.

DATED this 4th day of April, 2012.

RICHER & OVERHOLT, P.C.



Arnold Richer
Patrick F. Holden
Attorneys for Defendant World Botanical Gardens, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **DEFENDANT**
WORLD BOTANICAL GARDENS, INC.'S SECOND MOTION TO DISMISS to be
delivered to the following in the manner and on the date below indicated:

<input type="checkbox"/> Mail	Walter L. Wagner
<input type="checkbox"/> Fax	532 N 700 E
<input checked="" type="checkbox"/> Email	Payson, Utah 84651
<input type="checkbox"/> Hand Delivery	<u>retlawdad@hotmail.com</u>
	(Pro Se Plaintiff)

DATED this 4th day of April, 2012.

Patricia E. Hill